

## REVIEW ARTICLE

# Samuel Pufendorf and the Foundation of Modern Natural Law: An Account of the State of Research and Editions

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### Works by Samuel Pufendorf

*Gesammelte Werke*. Edited by Wilhelm Schmidt-Biggemann. Berlin: Akademie Verlag. vol. 1, *Briefwechsel*. Edited by Detlef Döring. 1996. Pp. xxix + 453. DM 298.00. ISBN 3-05-001920-4, vol. 2, *De officio*. Edited by Gerald Hartung. 1997. Pp. xv + 268. DM 220.00. ISBN 3-05-002880-7.

### German

*Über die Pflicht des Menschen und des Bürgers nach dem Gesetz der Natur*. Edited and translated by Klaus Luig. Frankfurt am Main: Insel Verlag. 1994. Pp. 259. DM 76.00. ISBN 3-458-16652-1. Bibliothek des deutschen Staatsdenkens, ed. H. Maier and M. Stolleis, vol. 1, *Die Verfassung des Deutschen Reiches*. Edited and translated by Horst Denzer. Frankfurt am Main: Insel Verlag. 1994. Pp. 340. DM 76.00. ISBN 3-15-000966-9. Bibliothek des deutschen Staatsdenkens, ed. by H. Maier and M. Stolleis, vol. 4,

*Kleine Vorträge und Schriften: Texte zu Geschichte, Pädagogik, Philosophie, Kirche und Völkerrecht*. Edited and with an introduction by Detlef Döring. Frankfurt am Main: Vittorio Klostermann. 1995. Pp. xiv + 586. DM 160.00. ISBN 3-465-02695-0. (Ius Commune. Sonderhefte. Studien zur europäischen Rechtsgeschichte, vol. 72).

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## English

*On the Natural State of Men.* The 1678 Latin Edition and English Translation. Translated, annotated, and introduced by Michael Seidler. Lewiston, N.Y.: Edwin Mellen Press. 1990. Pp. 140. \$69.95. ISBN 0-88946-299-2. (Studies in the History of Philosophy, vol. 13).

*The Political Writings of Samuel Pufendorf.* Edited by Craig L. Carr, translated by Michael J. Seidler. New York: Oxford University Press. 1994. Pp. ix + 285. \$49.95. ISBN 0-19-506560-3.

*On the Duty of Man and Citizen According to Natural Law.* Edited by James Tully, translated by Michael Silverthorne. Cambridge: Cambridge University Press. 1991, reprinted 1995. Pp. xlv + 183. \$59.95. ISBN 0-521-35195-2. (Cambridge Texts in the History of Political Thought, edited by J. Tully).

## French

*Les devoirs de l'homme et du citoyen, tels qu'ils lui sont prescrits par la loi naturelle.* Translated from the Latin by Jean Barbeyrac. 5th ed. Amsterdam 1735. Reprint Hildesheim: Olms Verlag. 1992. Pp. xlix + 523. ISBN 3-487-09562-9.

## Studies

*Tra egoismo e socialità: Il giusnaturalismo di Samuel Pufendorf.* By Vanda Fiorillo. Naples: Jovene Editore. 1992. Pp. 249. L36.000. ISBN 88-243-0983-6.

*Samuel von Pufendorf: Naturrecht und Staat: Eine Analyse und Interpretation seiner Theorie, ihrer Grundlagen und Probleme.* By Thomas Behme. Göttingen: Vandenhoeck & Ruprecht. 1995. Pp. 195. DM 46.50. ISBN 3-525-35649-8. (Veröffentlichungen des Max-Planck-Instituts für Geschichte 112).

*The Morality of the Fallen Man: Samuel Pufendorf on Natural Law.* By Kari Saastamoinen. Helsinki. 1995. Pp. 179. ISBN 951-710-003-5. (Societas Historica Finlandiae, Studia Historica 52).

*Samuel Pufendorf, filosofo del diritto e della politica.* Atti del Convegno Internazionale Milano, 11-12 November 1994. Edited by Vanda Fiorillo. Naples: La Città del Sole. 1996. Pp. xxii + 273. ISBN 88-86521-35-9.

*Samuel Pufendorf und seine Wirkungen bis auf die heutige Zeit.* Edited by Bodo Geyer and Helmut Goerlich. Baden-Baden: Nomos Verlagsgesellschaft. 1996. Pp. 287. DM 71.00. ISBN 3-7890-4426-1.

*Samuel Pufendorf und die europäische Frühaufklärung: Werk und Einfluss eines deutschen Bürgers der Gelehrtenrepublik nach 300 Jahren (1694-1994).* Edited by Fiammetta Palladini and Gerald Hartung. Berlin: Akademie Verlag. 1996. Pp. 263. DM 188.00. ISBN 3-05-002874-2.

In 1994 several European universities organized conferences to commemorate the 300th anniversary of Samuel Pufendorf's death. Publications related to these meetings provide important insights into the state of research and discussion about his work. For a long time investigations concentrated on Pufendorf's overwhelming influence on the shaping of natural law theory in the eighteenth century. Among the major achievements was the reconstruction of a tradition of natural jurisprudence leading from Grotius and Pufendorf to Scottish moral philosophy.<sup>1</sup> Renewed interest in Pufendorf's French translator Jean Barbeyrac led to the acknowledgement of the major role the Huguenot diaspora played in the diffusion and transformation of natural law as well as to the reconstruction of a French Swiss "school" of natural law and its influence on the French philosophes and on the shaping of physiocracy.<sup>2</sup>

The depiction of Pufendorf as a founding father of modern natural law was seriously questioned by Detlef Döring who presented him from a

1. A summary of this account is now available in Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, 1996).

2. See Catherine Larrère, *L'invention de l'économie au XVIIIe siècle* (Paris, 1992).

remarkably different perspective, namely as a historian and as a theologian. Both his *Pufendorf-Studien*<sup>3</sup> and his edition of *Kleine Vorträge und Schriften*—which contains Pufendorf's early lectures at the *Collegium Anthologicum* in Leipzig as well as numerous casual writings on history, philosophy, church, and international law—raised new interest in Pufendorf's seventeenth-century context, that is, his religious and political affiliations. Although an increasing number of studies has been devoted to his political, historical, and theological writings, it seems rather unlikely that this trend marks, as Dufour suggests, the transition to a new overall understanding of Pufendorf's work.<sup>4</sup> But Döring's reminder not to overlook Pufendorf's religious background and his political commitments may help to develop a more thoroughgoing understanding of the more "traditional" aspects of his thought that keep him at a distance from the onsetting early Enlightenment in Germany and elsewhere.

Given the multifarious influence of *De jure naturae et gentium* and *De officio hominis et civis juxta legem naturalem*, it is not surprising that these and related works, which had been out of print for a long time, have recently been reedited (or translated) in Latin, French, English, and German. The English reader has three careful new translations of Pufendorf's writings on natural law at his disposal: Michael Seidler's Latin-English edition of the dissertation *De statu hominum naturali*, Michael Silverthorne's translation of *De officio*, and Seidler's translation of selected chapters of *Elementorum jurisprudentiae universalis* and *De jure* (*Political Writings*). All editions contain excellent introductions as well as bibliographical appendices. The state of editions in Germany is more complicated. In 1994 Klaus Luig published a new translation of *De officio*, in some ways a German equivalent to Silverthorne's English translation. In contradistinction to Tully's introduction to the latter that discusses three major systematic questions (the distinction between natural law, civil jurisprudence, and moral theology; the foundation of natural law; the theory of the state), Luig concentrates on the position of *De officio* in the history of jurisprudence. His postscript contains an account of Pufendorf's life and writings, but there is no bibliography of primary and secondary works. Luig's translation appeared as volume 1 of the series *Bibliothek des deutschen Staatsdenkens*. As volume 4 of the same series Horst Denzer has presented a Latin-German edition of *De statu imperii germanici*. It is largely based on his earlier translation of an introduction to the same text (Stuttgart 1976). In 1995 and 1996 the first two volumes of the *Collected Works* of Samuel Pufendorf

3. Detlef Döring, *Pufendorf-Studien: Beiträge zur Biographie Samuel von Pufendorfs und zu seiner Entwicklung als Historiker und theologischer Schriftsteller* (Berlin, 1992).

4. Alfred Dufour, "Pufendorfs föderalistisches Denken und die Staatsräsonlehre," in *Samuel Pufendorf und die Europäische Frühaufklärung*, 105.

were published. The first volume contains all known letters from and to Pufendorf and replaces earlier partial collections. Whereas Döring's introduction, annotations, and registers fulfill the demands of a critical edition, Gerald Hartung's edition of *De officio* is less convincing. It reproduces the first Latin edition (1673) together with the first German translation by Immanuel Weber (1691). Although reedited in 1701 and 1721 the latter was neither widely disseminated in the eighteenth century nor is it—due to its baroque style—of great use to the modern reader.<sup>5</sup> The reprint of this translation looks very much as a—albeit understandable—stopgap solution, especially in view of the fact that a modern translation of the text was provided by Luig, and Barbeyrac's much more important annotated French translation has already been reprinted by Olms. That is not to say that early German translations and commentaries of *De officio* would be of no interest to researchers. But the reproduction of Weber's translation does not meet the demand for a critical account of the reception of Pufendorf's work in Germany. The volume of the *Collected Works* containing *De jure* will face similar problems, because the long announced reprint of the German translation of *De jure* (1711)—which is valuable thanks to the annotations of J. N. Hertius, J. Barbeyrac, and others—is now on the way.

The question of how to deal with contemporary translations as well as with the translators' annotations is among the main problems that a critical edition of Pufendorf's works must resolve. Despite the fact that one can easily distinguish between a Scottish, French, and German tradition of natural jurisprudence in the eighteenth century, the reception of *De jure* and *De officio* has to be considered in a cross-cultural European context. Not only were commentators such as Barbeyrac, Burlamaqui, Thomasius, Titius, or Carmichael aware of each other,<sup>6</sup> but communication on a European scale was also guaranteed by the dissemination of Pufendorf's work through reviews in the learned journals in the Netherlands<sup>7</sup> and elsewhere. Moreover, controversies such as the famous debate between Leibniz and Barbeyrac about the proper foundation of natural law, that was published as an appendix to the third and later French edition of *De officio*, played a major role in the reception of Pufendorf's theory. The recent publication of volume 2 of the *Collected Works* is characterized by a lack of sensitivity for these issues.

The following depiction of the actual state of research, covering publications since 1992, is divided into two parts. The first section concentrates on three main topics of discussion that are directly linked to the problems

5. Klaus Luig, "Nachwort," in *Über die Pflicht des Menschen und des Bürgers*, 217.

6. See Thomas Mautner, "Carmichael and Barbeyrac: The Lost Correspondence," in *Samuel Pufendorf und die europäische Frühaufklärung*, 190–208.

7. J. J. V. M. de Vet, "Some Periodicals of the United Provinces on Pufendorf: Reconstructing the Reception of his Ideas in the Seventeenth and Eighteenth Centuries," in *Samuel Pufendorf und die europäische Frühaufklärung*, 209–35.

addressed by Döring: Pufendorf's account of the German Empire, his concept of religion and toleration, and the relation between his natural law theory and his theological and historiographical works. Section two is devoted to studies dealing with Pufendorf's place in the history of modern natural law. Articles dealing with the history of law in a more narrow sense will not be considered here in any detail.

1. Among the most interesting developments of the past years I would like to mention the renewed discussion of Pufendorf's *De statu imperii germanici* published in 1667 under the pseudonym Severinus de Monzambano. In the 1690s Pufendorf prepared a second edition that was published posthumously in 1706. It is well known that he termed the German Empire a "monster," because sovereignty was divided between the emperor and the estates. He considered it as an "irregular" state, because it represented neither a monarchy nor a confederacy of states. To answer the question of how the multiplicity of political entities was related to the institution of the empire, he introduced the concept of a "system of states," examined by Alfred Dufour.<sup>8</sup> Dufour's contribution is important, inasmuch as he considers the close link between the emergence of Pufendorf's political theory and its practical application. He demonstrates how Pufendorf further elaborated the concept of a "system of states" in two dissertations written in Heidelberg (*De systematibus civitatum*, 1668, and *De republica irregulare*, 1669). Pufendorf used these works in working out his new theory of forms of government that he later explained in *De jure*, where he replaced the Aristotelian distinction between legitimate and illegitimate types of government by the distinction between "regular" and "irregular" states, applying the unity of sovereignty as a criterion. The practical importance of this new typology is evident in Pufendorf's critical account of "systems of states" such as the German Empire, but also the United Provinces of the Netherlands and the Helvetic Confederation. According to Dufour Pufendorf's interest in "systems of states" reached its apex in the theory of "interests of states" that played, as we shall see, a major role in his analysis of international order.

James Moore and Michael Silverthorne's analysis of *De statu*, which forms a part of a comparative account of the concept of union in the German Empire, the Netherlands, and Great Britain,<sup>9</sup> is based on Döring's

8. Alfred Dufour, "Pufendorfs föderalistisches Denken, 105-22. Same in French: "Federalisme et raison d'état dans la pensée politique pufendorfienne," in *Samuel Pufendorf filosofo del diritto e della politica*, 107-273.

9. James Moore and Michael Silverthorne, "Protestant Theologies, Limited Sovereignities: Natural Law and Conditions of Union in the German Empire, the Netherlands and Great Britain, in *A Union for Empire: Political Thought and the British Union of 1707*, ed. John Robertson, (Cambridge, 1995), 171-97.

reinterpretation of Pufendorf's work in *Pufendorf-Studien* and numerous subsequent articles.<sup>10</sup> The latter maintains that Pufendorf should not be considered as the one who brought forward the process of secularization of natural law, but that he was rather a devout Lutheran wishing to maintain a profoundly Christian society. According to Döring one important aspect of Pufendorf's Lutheranism consists in his strong anti-Catholicism that was almost completely absent from his jurisprudential writings, but is undeniably an essential topic in his political writings.

Moore and Silverthorne argue that Pufendorf's skeptical assessment of the possibility of transforming the empire into a "regular" form of state, that is a "confederacy of states," is the result of his Lutheran conviction. According to Pufendorf in a "regular" system of states "a number of sovereign states were united, typically, by a perpetually binding treaty or covenant or accord."<sup>11</sup> Such an accord requires the states mutually to agree on a limitation of their sovereignty. Pufendorf located the main opposition to the introduction of such a system on the side of the emperor. How did he explain the emperor's opposition? According to Moore and Silverthorne it cannot be rooted in the particular "interests" of the empire, because this argument would equally apply to the individual states. They thus propose to explain it as a result of the religious conviction of the emperor, i.e., his Catholicism that directed him to seek aggrandizement of worldly power. As Pufendorf was convinced that Protestantism corresponded to "good government," he had good reasons to suppose that Protestant states would be willing to limit their rights.

Moore and Silverthorne's argument that "it was the theological persuasion of the emperor that was the object of his [Pufendorf's] anxieties"<sup>12</sup> reflects a misunderstanding of his anti-Catholicism, a misunderstanding for which Döring prepared the ground. It is certainly true that Pufendorf is, in the last chapter of *De statu*, highly critical of Catholicism. However, he did not identify Catholicism and the German Empire in the way Moore and Silverthorne suggest. As the title of his most thoroughgoing criticism of Catholicism—*Political Consideration of the Spiritual Monarchy of the Holy See at Rome*—demonstrates, it was directed against the worldly ambition of the church that he also called the "Empire of the Pope." In *De statu* he gives a historical account of the relations between the pope and the German emperors that amounted, already in the time of Charles the Great,

10. See especially Detlef Döring, "Säkularisierung und Moralthologie bei Samuel von Pufendorf," *Zeitschrift für Theologie und Kirche* 2 (1993): 156–74. "Untersuchungen zur Entwicklung der theologischen und religionspolitischen Vorstellungen Samuel von Pufendorfs," in *Religion und Religiosität im Zeitalter des Barock*, ed. Dieter Breuer, part 2, (Wiesbaden, 1995), 873–82.

11. Moore/Silverthorne, "Protestant Theologies," 180.

12. *Ibid.*, 182.

to nothing more than a protectorate. The emperor was the protector of the Holy See that consisted “as it were of an independent state.” The protectorate was renewed by the time Otto I had secured dominion over Italy and was subsequently transmitted to the succeeding German emperors. Pufendorf sarcastically remarks that they used their right *against* the Holy See, and that it was thus no surprise that the pope, whose power had considerably increased, wanted to get rid of this domination. As a result of the many problems imposed on them by the pope and the German bishops, the emperors eventually contented with their own empire, so that merely “the ancient title of Roman Emperor [. . .]” remained.<sup>13</sup> Due to the support of the pope the German bishops succeeded in getting rid of the worldly domination of the emperor.<sup>14</sup> Given the fact that Pufendorf dealt with the German Empire and the empire of the pope as independent and separate institutions, it is rather unlikely that the anti-Catholic paragraphs of *De statu* were addressed at the emperor in any direct way. It seems more accurate to refer to his more explicit diagnosis that the empire was shaken “by a destructive tug of war between the interests of the emperor and of the estates”: “the former aims by all means at the restoration of the ancient monarchical rights, the latter steadily defend their achieved position of power.”<sup>15</sup>

A similar overstatement of Pufendorf’s anti-Catholicism is at work in Döring’s explanation of the revision of the first edition of *De statu*, completed by Pufendorf in the early 1690s.<sup>16</sup> Döring first demonstrates that the revision should be seen in connection with Pufendorf’s move from Stockholm to Berlin, a transfer that was motivated by his increasing awareness of the important role played by the German Empire in opposing the French ambition for more power and of the danger of the imminent destruction of Protestantism in Europe. However, to fulfill this task the empire had to be transformed into a “confederacy of states.” Whereas in 1667 Pufendorf was skeptical about the possibility of such a transformation, he was now ready to acknowledge the Imperial Diet in Regensburg as the “perpetual council” that was required for a confederacy of states. Moreover, he omitted the paragraphs about the confessional division of the empire, which he formerly numbered among its weaknesses, and recommended mutual toleration. According to Döring the omission is to be taken as a weakening of the formerly explicit criticism of the emperor’s protection of Catholicism. However, one should not overlook the fact

13. Samuel Pufendorf, *Die Verfassung des Deutschen Reiches*, ed. Horst Denzer, 20–23.

14. *Ibid.*, 51.

15. *Ibid.*, 119.

16. Detlef Döring, “Untersuchungen zur Entwicklungsgeschichte der Reichsverfassungsschrift Samuel Pufendorfs (Severinus de Monzambano),” *Der Staat* 33, no. 2 (1994): 185–206.



that the omitted paragraphs contained not just anti-Catholic statements, but also explicit remarks about the political utility of the Protestant denominations. Hiding behind a fictitious dialogue partner Pufendorf asserted that Lutheranism corresponds to “good government” and is most useful for the German princes, because it is best suited for supporting monarchy. With regard to Calvinism he insinuated that it is bent on innovations and promotes democratic liberty. I would thus propose to explain the omission of these paragraphs by pointing to Pufendorf’s conviction that Protestant unity was necessary to oppose Catholic France. He refrained from confessional polemics, because he thought that an alliance of Protestant powers, of which the German Empire formed an important part, was necessary to maintain the balance of power in Europe. Moreover, he wished to keep his distance from polemicists such as the preacher at the Danish court, Hector Gottfried Masius, who introduced, in *Interesse principum circa religionem evangelicum* (1687), the doctrine of the divine origin of sovereignty as a specifically Lutheran doctrine and claimed that Lutheranism was the only Christian denomination compatible with monarchy.<sup>17</sup>

My first and more important argument is further supported by Maurizio Bazzoli’s overall interpretation of *De statu*.<sup>18</sup> He proposes to evaluate Pufendorf’s analysis of the German Empire within the context of his theory of international order. Bazzoli’s study begins with the observation that Pufendorf’s recommendation to transform the empire into a “confederation of states” directed by a “perpetual council” corresponds to the theory of alliances in *De jure* as well as to the historical analysis of European states in *Einleitung zu der Historie der vornehmsten Reiche und Staaten, so jetziger Zeit in Europa sich befinden* (1682). Pufendorf’s analysis of state power is based on a relativistic and dynamic principle according to which the power of a state depends on its relation with its neighbors. For that reason he discusses questions of security and peace in terms of “interests” of states that depend on specific political and historical constellations. According to his pessimistic or “realistic” view of the peaceful coexistence of states, Pufendorf dealt with international order not in terms of “international political ethics,” but in terms of the balance of power. As an important means to defend a state’s interest Pufendorf recommends, in *De jure*, the forming of alliances to uphold a balance of power between groups of states. The concept of a “perpetual confederacy” represents a special kind of alliance guaranteeing mutual defense.

17. Frank Grunert, “Zur aufgeklärten Kritik am theokratischen Absolutismus: Der Streit zwischen Hector Gottfried Masius und Christian Thomasius über Ursprung und Begründung der *summa potestas*,” in *Christian Thomasius: Neue Forschungen im Kontext der Frühaufklärung*, ed. Friedrich Vollhardt (Tübingen, 1997).

18. Maurizio Bazzoli, “La concezione pufendorfiana della politica internazionale,” in *Samuel Pufendorf filosofo del diritto e della politica*, 29–72.

In *Einleitung* Pufendorf evaluates European powers with regard to their “just greatness” as well as to their proper “interests.” Based on the distinction between “real” and “imaginary” interests of states, he denounces the concept of “universal monarchy” as an “imaginary interest” of France. The historical analysis of the relation between the European powers leads him to the conclusion that beside England it is merely the German Empire that has a chance to counterbalance the French ambition for power—under the condition that it transforms itself into a confederative political unity. The merit of Bazzoli’s study consists not only in a fresh approach to *De statu*, but also in the outline of Pufendorf’s formerly neglected theory of international order on the basis of both his natural jurisprudence and of his political writings.

A correction of Döring’s overstated insistence on Pufendorf’s religious convictions seems necessary also with regard to his theory of toleration.<sup>19</sup> In his latest article Döring summarizes his arguments as follows: “In the last analysis, he [Pufendorf] never escaped from his Lutheran roots and thus his toleration was never more than liberal Lutheranism.”<sup>20</sup> He is certainly right in pointing to the limits of Pufendorf’s notion of toleration, and it is also true that Pufendorf was convinced of the political utility of religious unity in a state. But Döring simply does not consider the fact that Pufendorf also argued, based on his contractual theory of the state, that the state was not founded for the enhancement of religion and that a ruler who persecutes subjects on grounds of their religion transgresses the limits of his power. Relying on this argument Pufendorf denounced the revocation of the Edict of Nantes. A more balanced evaluation of Pufendorf’s theory of toleration was provided by Horst Dreitzel and Christoph Link. Dreitzel describes Pufendorf’s position within the context of the crisis of the confessionalist theory of the state at the end of the seventeenth century. An overview of theories of toleration and freedom of conscience in the German Empire between the Peace of Augsburg and the beginning of the Enlightenment<sup>21</sup> leads him to the conclusion that Pufendorf’s theory marks the transition to the Enlightenment. According to Dreitzel Pufendorf belongs to the founders of a modern tolerant state, because he separated the political function of religion from revealed religion.

19. See Simone Zurbuchen, “Samuel Pufendorf’s Concept of Toleration,” in *Difference & Dissent: Theories of Tolerance in Medieval and Early Modern History*, ed. Cary J. Nederman and John Christian Laursen (Lanham, 1996), 163–84.

20. Detlef Döring, “Samuel Pufendorf and Toleration,” in *Beyond the Persecuting Society: Religious Toleration before the Enlightenment*, ed. John Christian Laursen and Cary J. Nederman (Philadelphia, 1998), 178.

21. Horst Dreitzel, “Toleranz und Gewissensfreiheit im konfessionellen Zeitalter: Zur Diskussion im Reich zwischen Augsburger Religionsfrieden und Aufklärung,” in *Religion und Religiosität im Zeitalter des Barock*, ed. Dieter Breuer, part 1, (Wiesbaden, 1995), 115–28.

In a second article, devoted to a comparison of the theories of Locke, Bayle, Spinoza, Pufendorf, and Conring,<sup>22</sup> Dreitzel provides a more detailed account of the same argument. He recognizes that in *De habitu religionis christianae* Pufendorf advocated freedom of religion on the one hand and defended the state's competence to ensure the social function of religion on the other. He united the two demands by a limitation of the "just circa sacra" to the bounds of "natural religion" and to the "general supervision" of the church. However, Pufendorf departs from this conception when he deals with states in which the sovereign and the majority of the people adhere to the same religion. He adopts the Lutheran doctrine that the prince represents the "membrum praecipuum" of the church. However, he modifies it by describing the prince as "primus inter pares" instead of "head of the church" and by maintaining his concept of the church as a "collegium." According to Dreitzel this construction demonstrates that Pufendorf tried to adapt it to the proposed limitation of state power. But he also admits that Pufendorf's defense of the sovereign's right to refuse civic rights to those who depart from the received cult conflict with his advocacy of religious freedom.

In an article about "church and state" Christoph Link comes to a similar conclusion. On the one hand he recognizes that Pufendorf used his contractual theory of the state to demonstrate that the state was not founded for the enhancement of religion and that the salvation of souls should not rank as a legitimate end of the state. On the other hand he admits that Pufendorf considered, in the *Christian state*, divine law to be a part of the public order and that he used theological, more specifically Lutheran arguments to define the position of the ruler within the church.

As these examples demonstrate, the lack of coherence in Pufendorf's theory of toleration should not cause scholars to forego investigating the relation between his natural law theory and his political and historical writings. In this regard Michael Seidler's contribution on the right of resistance is exemplary. He starts with the observation that Pufendorf denies in *De jure* any right to resistance or revolt, but supports, in *De rebus gestis Friderici Tertii* . . . an actual revolution, namely the English revolution of 1688/89. He aims to demonstrate that this does not amount to a contradiction in Pufendorf's thought, but that there is indeed a strong, albeit "hidden," theory of resistance in Pufendorf. In *De jure* he does not use the language of resistance or revolt. It is only in his later writings, particularly in *De habitu*, that he openly defends the citizen's rights to resist tyranny. The key element of Seidler's argument lies in Pufendorf's

22. Horst Dreitzel, "Gewissensfreiheit und soziale Ordnung: Religionstoleranz als Problem der politischen Theorie am Ausgang des 17. Jahrhunderts," *Politische Vierteljahresschrift* 36, no. 1 (1995): 3–36.

theory of sovereignty. Unlike Hobbes, Pufendorf distinguishes between a contract of association, a decree by which the majority decides about the form of government, and a contract of submission by which sovereignty is established and the future subjects submit their will to the person or group designated as sovereign. As Seidler remarks, the important aspect here is that Pufendorf acknowledges that “the persons who individually submit themselves to the sovereign through the second contract already have a kind of collective status through the first.”<sup>23</sup> As the contract of submission is mutually binding, a ruler can break it. As a result the citizens are released from their vow of obedience. Seidler argues that Pufendorf’s restrictions concerning the right of resistance in *De jure* are not rooted in his theory of sovereignty, but rather “in his more basic sociality principle, which morally grounds pacts [. . .] and determines the conditions under which they are to be made and kept.”<sup>24</sup> Despite his caveats he was explicit with regard to the conditions of obedience that the ruler has to fulfill. In a careful analysis of the rarely discussed *De rebus gestis Friderici Tertii* . . . Seidler demonstrates that Pufendorf’s assessment of the English revolution of 1688 exactly reflects the “hidden” theory of resistance of *De jure* to which Pufendorf referred also in *De habitu*. There he openly asserted that “it is undeniable that there are some Cases of Necessity, when this civil Tie or Allegiance may be dissolved”<sup>25</sup> and acknowledged that in these cases subjects have the right to defend their religion by the force of arms.

2. Although the studies presented in this section do not react to Döring’s arguments in any direct way, they also reflect the tension between a “traditional” and a “modern” interpretation of Pufendorf’s work, a tension that marks the debates initiated by Döring. Whereas Kari Saastamoinen reconstructs Pufendorf’s natural jurisprudence in the light of his Lutheran inheritance, Vanda Fiorillo, concentrating on questions of methodology and economics, decidedly defends its “modern” aspects. Although Saastamoinen—whose doctoral dissertation was published in 1995, but was probably written earlier—does not quote Fiorillo, there exists a kind of “hidden controversy” between the two scholars, for their reconstructions of Pufendorf’s demonstration of *socialitas*, i.e., his principle of natural law, are directly opposed to each other. Insisting on the utilitarian character of Pufendorf’s anthropology, Fiorillo argues that *socialitas* is ultimately anchored in an egoistic and appropriative component of human nature. She holds that in Pufendorf mature writings *socialitas* is constructed as an element tending productively to recover the egoistic passions of the individuals, and thus reveals his conception of social life as instrumental rather

23. Ibid., 91.

24. Ibid., 93.

25. Quoted by Seidler, 97.

than ethical.<sup>26</sup> Although predominantly concerned with self-preservation, men must become social, because their natural weakness (*imbecillitas*) makes them dependent upon assistance of and collaboration with others. Drawing on Hont's magisterial article of 1987,<sup>27</sup> Fiorillo reconstructs the development from the natural state of *imbecillitas* to the cultural state of *socialitas*, in which the four stages theory of history of the Scottish Enlightenment is foreshadowed. The original aspect of her analysis is contained in the sections dealing with Pufendorf's theory of luxury (in his dissertation *De legibus sumptuariis*) and his reflections on the increase of population. Describing him as a mercantilist, she concludes that Pufendorf used *socialitas* as a key concept in explaining the socioeconomic reality of Germany in his time.

In contrast to this view Saastamoinen contests the argument that Pufendorf's account of *socialitas* was built on the notion of self-preservation. According to him Pufendorf rejects the idea of the correspondence between natural law and predominant natural inclinations such as the desire for self-preservation. Saastamoinen thus recognizes the fact that Pufendorf based his natural jurisprudence on "the fallen man." It is as a consequence of the fall that men lack some of the natural tendencies they possessed in paradise and that they disobey God and violate each other. Saastamoinen considers the fact that Pufendorf commenced his analysis with the notion of the corrupted state of man to be a Lutheran heritage, for it was Luther who maintained "that there is a radical discrepancy between the way God wants human beings to behave and the manner in which they are inclined to act."<sup>28</sup> To illustrate the discrepancy in Pufendorf Saastamoinen points to paragraphs such as *De jure* II.3.16, where Pufendorf points to the example of a nation "which is so powerful that it can do whatever it wants to the neighboring countries without having to fear their revenge."<sup>29</sup> He argues that if that nation plundered, killed, and dragged other into slavery, we would conclude that it infringed on natural law, although its behavior would not be detrimental to its self-preservation. The discrepancy reappears in Pufendorf's foundation of *socialitas*, where he distinguishes between man's state of corruption and the state of happiness that God intended for him when imposing natural law upon him. Saastamoinen thus concludes that *socialitas* is ultimately based on the purpose for which God has imposed natural law on human beings, i.e., a state consisting of

26. Vanda Fiorillo, *Tra egoismo e socialità*, 49.

27. Istvan Hont, "The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the 'Four-Stages Theory,'" in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge, 1987), 253–76.

28. Kari Saastamoinen, *The Morality of the Fallen Man*, 39.

29. *Ibid.*, 67.

more than mere physical self-preservation and security, as it includes the possession of the rational faculties and the opportunity of using them in order to increase happiness.<sup>30</sup> It should be noted that Thomas Behme basically agrees with this reconstruction of the principle of natural law. Unlike Saastamoinen, he points to the teleological concept of nature that underlies Pufendorf's idea of the purpose of human development that God intended for men when imposing natural law upon them. Accordingly, he describes the "traditional" element of Pufendorf's foundation of natural law not in terms of the Lutheran tradition, but in terms of the Aristotelian-scholastic tradition.

Although from a very different angle, J. Schneewind's reconstruction of the core of Pufendorf's notion of obligation lends further support to the interpretation of Saastamoinen and Behme.<sup>31</sup> It leads to the conclusion that Pufendorf's theory of obligation was based on the distinction between the (objective) claims of natural law and the (subjective) claims of self-preservation. Schneewind develops this argument in an article devoted to the emergence and the development of a voluntarist and a rationalist version of natural law that is also the object of one of Simone Goyard-Fabre's recent contributions. The proper foundation of the two positions was at stake in the controversy between Leibniz and Barbeyrac mentioned above. In his detailed analysis of this controversy Schneewind identifies the relation between God and morality as the main issue of contention. Whereas voluntarists such as Pufendorf interpret moral norms as emanating from God's will, rationalists such as Leibniz accuse their opponents of reducing the relation between man and God to a relation of servitude. Those conceiving of God as a tyrant, they argue, can neither venerate nor love him. According to Leibniz moral norms should thus be founded upon God's justice. God's relevance for morality is evident from Leibniz's view that it is God's existence which guarantees the harmony between "our necessary pursuit of our own good and the accepted moral necessity of contributing to the good of everyone else."

Goyard-Fabre attempts to explain the emergence of these two types of natural law theory.<sup>32</sup> In the eighteenth century they were represented by Barbeyrac, Thomasius, and Burlamaqui on the one hand, by Leibniz, Wolff, and Vattel on the other hand. She traces the "philosophical bifurcation" of modern natural law theory back to Grotius and Pufendorf whom she

30. Ibid., 86.

31. J. Schneewind, "Barbeyrac and Leibniz on Pufendorf," in *Samuel Pufendorf und die europäische Frühaufklärung*, 181–89.

32. Simone Goyard-Fabre, "Pufendorf et Grotius: deux faux amis ou la bifurcation philosophique des théories du droit naturel," in *Samuel Pufendorf filosofo del diritto e della politica*, 171–207. See also her *Pufendorf et le droit naturel* (Paris, 1994).

considers as “false brethren.” Goyard-Fabre reconstructs their different understanding of natural law on the basis of the methodological premises of their work. Despite their common appreciation of the method of mathematics, they differed in their understanding of rationality. For Grotius the meaning of rationality was not restricted to a methodological paradigm as he identified the rules of reason with natural laws. Pufendorf, however, held that the principle of natural law did not represent a Euclidian kind of postulate, but that it had to be deduced from the observation and analysis of human nature. According to Goyard-Fabre these methodological differences provide the basis for Grotius’s rationalist and Pufendorf’s voluntarist foundation of natural law. Whereas Grotius considers natural law as a command of reason that is “inscribed” in human nature, Pufendorf gives priority to man’s free will in obeying rules discovered by himself. Reason as such is not endowed with the force of normativity, but it provides the means for knowing natural law imposed on man by God’s will. The opposition between Grotius and Pufendorf explains the differences between rationalist and voluntarist accounts of obligation that were at stake in the controversy between Leibniz and Barbeyrac.

Unlike Goyard-Fabre who aims at reconstructing the historical development of natural law, Schneewind’s analysis points to a systematic problem of eighteenth-century moral philosophy that was ultimately resolved by Kant. He proceeds from the observation that on the surface the debate between rationalism and voluntarism centered around the problem of atheism, for Barbeyrac argued against Leibniz that if morality depends merely on God’s justice then God would no longer be necessary as a foundation of morality. However, Schneewind points to a “deeper reason” for Barbeyrac’s criticism. It amounts to the reproach that rationalism conflates rational and selfish motives of actions. According to Barbeyrac Pufendorf was aware of the fact that acting in accordance with a law cannot depend on the desire to increase one’s own perfection, but requires a special motive. Since the justification of a moral action is incommensurable with the justification of an action aiming at individual perfection, “it follows that there must be different kinds of motivation that enable us to respond to them.” Schneewind claims that by insisting that laws of morality have to be obeyed as such rather than as advice about the good, “Pufendorf in effect asserted that the claims of morality are incommensurable with those of prudence and take priority over them.” In this way he demonstrates that the Leibniz-Barbeyrac exchange “helps us to see the emergence of the problems Kant meant his theory to resolve.”<sup>33</sup>

The “hidden controversy” between Fiorillo and Saastamoinen as well as

33. Schneewind, “Barbeyrac and Leibniz,” 188–89.

the debates initiated by Döring make it clear that the different conclusion about the place of Pufendorf's work in the history of natural law depend to a large extent on the perspective of interpretation. Whereas historians of ideas who consider him as an ancestor of the moral philosophy of the Enlightenment focus on the "modern" elements of his thought, contextualist historians such as Döring accentuate his indebtedness to the past. However, Schneewind's analysis of Pufendorf's notion of obligation does not fit into this opposition between "progressivists" and "traditionalists." It is no doubt directed by his outlook on the development of eighteenth-century ethics. Future research will have to ponder whether there is something like "the" doctrine of Pufendorf that explains the different traditions of natural jurisprudence in the eighteenth century.

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